



San Diego City Attorney **CASEY GWINN**

NEWS RELEASE

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SAN DIEGO CITY'S SPECTATOR ORDINANCE UPHELD BY COURT OF APPEAL

CITY ATTORNEY AND COUNCILMEMBER MADAFFER SAY THE SPECTATOR ORDINANCE IS SAVING LIVES

San Diego, CA: The City's Spectator Ordinance stays on the books. Today, the California Court of Appeal issued an opinion upholding the City's Spectator Ordinance, finding it was not preempted by state law. The ruling stems from a March 23, 2003, San Diego Police undercover operation in the vicinity of Highway 905 in Otay Mesa. The police detail was in response to business owners' complaints of a large group of motorcyclists, known as "905 Racing," performing stunts and exhibitions of speed, and spectators damaging the surrounding property. During the enforcement action, spectators were observed and videotaped standing on the curb line watching the exhibitions of speed. Thirteen people were arrested for being spectators at an illegal exhibition of speed. From that operation, the City Attorney's Office filed criminal charges against eleven people for violating Municipal Code section 52.5203(a), making it a misdemeanor to be knowingly present at illegal speed contests and exhibitions of speed. City Attorney Casey Gwinn and City Councilmember Jim Madaffer, the City's lead advocate for the spectator ordinance, both hailed the court decision.

"The Spectator Ordinance has had a huge impact on public health and safety which is saving lives," said San Diego City Attorney Gwinn. "Last year, the death rate from illegal street racing on City streets dramatically decreased to one, compared to eight deaths in 2002. To-date in 2004, there have been NO deaths and injuries in racing-related collisions within the City of San Diego. In addition, the large numbers of racers and spectators gathering on City streets have practically disappeared." City Councilmember Madaffer stated, "The Court's action today should send a message to all who might participate in illegal street racing that the

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City's laws are strong, have been validated and will be enforced - our goal is to save lives.”

According to Deputy City Attorney Linda Peter, criminal defendant Randon Foley challenged the City’s ordinance on preemption grounds, stating the California Vehicle Code already regulates speed contests and exhibitions of speed, thereby making the Spectator Ordinance void. The court disagreed, however, finding that “the Vehicle Code sections dealing with speed contests and exhibitions of speed are complimentary [sic] to and not in conflict with the San Diego Municipal Code sections dealing with spectators at such activities.”

Illegal speed contests, often called illegal street racing, peaked in 2001 when the City Attorney’s Office prosecuted 290 misdemeanor violations. In 2002, after aggressive intervention from the Police Department and the City Attorney’s Office, the number of cases declined to 155. However, the reduced number of cases was deceiving since the problem was still very serious – in 2002, racing-related collisions on City streets resulted in eight deaths and 16 injuries. In response to the epidemic of racing-related fatalities, the San Diego City Council passed the Spectator Ordinance in October 2002. The aim of the ordinance was to target the hundreds of spectators that, by their mere presence, fueled the illegal races and exhibitions of speed. As a nuisance abatement measure, the Spectator Ordinance attempted to reduce other criminal activity that accompanied the illegal races and exhibitions of speed. Last year, racing-related collisions resulted in one death and two injuries on City streets. The City Attorney’s Office prosecuted only 60 misdemeanor violations for illegal speed contests.

The Spectator Ordinance makes it a misdemeanor to be knowingly present at illegal speed contests and exhibitions of speed, punishable with up to 6 months in jail and a \$1,000 fine. The court’s opinion may be found on-line at <http://www.courtinfo.ca.gov/opinions/documents/D043155.PDF>

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